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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Helmut Jerg
Application Number: 10/603,531
Filing Date: 06/25/2003
Group Art Unit: 1797
Examiner: Joseph W. Drodge
Title: FILTER

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AMENDED APPEAL BRIEF

This Amended Appeal Brief is responsive to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) dated November 10, 2008 having a response due date of December 10, 2008.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeraete GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 8, 10-12, 14, and 16-20 are pending in the application and have been finally rejected. The final rejection of claims 8, 14, and 19 is being appealed. Claims 10-12, 16-18, and 20 would be allowable if rewritten into independent form.

(4) STATUS OF AMENDMENTS

No Amendment has been filed subsequent to the May 10, 2007, Final Rejection.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 8

Independent claim 8 of the present application recites a filter 1 (Figure 1; page 2, lines 8, 10, 12-13, 16, 22, 26, 29, 32, and 35; page 3, lines 14, 17, 22, 25, 27, and 30; page 4, lines 9, 13, page 4, lines 17, and 21; page 5, lines 18, and 21) that includes a filter body 2 (Figure 1; page 4, line 22) having a plurality of filter openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and

17) for filtering a medium flowing through the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17). Each of the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) being screened or covered by elements 4 (Figures 1-3; page 2, lines 24, and 35; page 2, line 37 – page 3, line 1; page 3, lines 5, and 19; page 4, lines 10, 14, 18, 31-32, and 33-34; page 5, lines 1, 4, 11, and 16) whose state relative to the filter openings (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) vary under the influence of the heat of the medium flowing through said openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17).

CLAIM 14

Independent claim 14 of the present application recites a dishwashing machine (page 1, lines 8, 10; page 3, lines 26-27). The machine (page 1, lines 8, 10; page 3, lines 26-27) including a water medium utilized in the machine (page 1, lines 8, 10; page 3, lines 26-27). The machine (page 1, lines 8, 10; page 3, lines 26-27) including a filter 1 (Figure 1; page 2, lines 8, 10, 12-13, 16, 22, 26, 29, 32, and 35; page 3, lines 14, 17, 22, 25, 27, and 30; page 4, lines 9, 13, page 4, lines 17, and 21; page 5, lines 18, and 21) for filtering the water medium in the machine (page 1, lines 8, 10; page 3, lines 26-27) that includes a filter body 2 (Figure 1; page 4, line 22) having a plurality of filter openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) for filtering the medium flowing through the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17). Each of the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and

36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17), including the filter openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) being screened or covered by elements 4 (Figures 1-3; page 2, lines 24, and 35; page 2, line 37 – page 3, line 1; page 3, lines 5, and 19; page 4, lines 10, 14, 18, 31-32, and 33-34; page 5, lines 1, 4, 11, and 16) whose state relative to the filter openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17) vary under the influence of the heat of the medium flowing through the openings 5 (Figures 1-3; page 2, lines 6, 11, 23, 25, 27-28, and 36-37; page 3, lines 1, 18, 23, and 36-37; page 4, lines 1, 9-10, 15, and 35; page 5, lines 13, and 17).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 8, 14, and 19 are unpatentable under 35 U.S.C. § 103(a) as being obvious in view of the Alabaster reference?

(7) ARGUMENT

The Office Action alleges that claims 8, 14, and 19 are unpatentable under 35 U.S.C. § 103(a) as being obvious in view of the Alabaster reference. Appellant respectfully traverses this rejection.

The Alabaster reference does not disclose a plurality of filter openings for filtering a medium flowing through the openings that are screened or covered by elements whose state relative to the filter openings vary under the influence of the heat of the medium flowing through the openings. This feature is important for providing a filter that is self cleaning by varying the heat of the medium.

In stark contrast, the Alabaster reference discloses a mesh material 9 that is supported by a wire frame 3, 4, and 5 that has a throat area 10 that is varied by a baffle 24 that flexes when heated. This solves a problem of foam overflowing the throat area 10 and carrying soil out of the filter rather than forcing the foam B to flow through the mesh material 9. When the washing cycle is initiated, the medium is relatively cold and does not have a high amount (if any of foam). As the cycle continues, the amount of foam increases and the heat of the medium increases. In response to the increased heat, the baffle 24 further restricts the throat area 10 so as to force the foam through the mesh material 9 and prevent overflow of the foam. In other words, the Alabaster reference merely discloses a baffle 24 which varies the area of the throat area through which the medium flows before the medium passes through the filter openings in the mesh material.

The throat area 10 of the Alabaster reference is very clearly not a filter opening for filtering the medium as recited by the claims. Indeed, the throat area 10 does not filter the medium at all.

The Allegation that the throat area 10 corresponds with the claimed filter openings for filtering the medium stretches the interpretation of the claim language well beyond its broadest reasonable interpretation.

"The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would

reach.” *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Appellant respectfully submits that those skilled in the art would have recognized that the throat area 10 does not correspond with the filter openings for filtering the medium as recited by the claims. Rather, those skilled in the art would have recognized the openings in the mesh material 9 which filter the medium correspond to the claimed filter openings.

“[T]he words of a claim must be given their plain meaning unless the applicant has provided a clear definition in the specification.” *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). “Ordinary simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.” *Liebel-Flarsheim Co. v. Medrad Inc.*, 358 F.3d 898, 906, 69 USPQ2d 1801, 1807 (Fed. Circ, 2004).

The allegation by the Office Action that the throat area 10 in the Alabaster reference corresponds to “filter openings for filtering a medium flowing through the openings” stretches the meaning of the claim term well beyond the plain meaning of the term and certainly beyond any broadest reasonable interpretation.

Indeed, the Alabaster reference itself confirms that the throat area 10, in which the baffle 24 acts, does not filter the medium at all. The Alabaster reference explains that despite the fact that the medium flows through the throat area 10, that foam in the medium may flow back out through the throat area 10 and thereby not be filtered. (see for example, col. 3, lines 54-73). The Alabaster reference is

directed to solving this problem by narrowing the throat area 10 such that the foam does not escape filtering by forcing it through the openings in the mesh material 9.

The Office Action also attempts to allege that "Figure 5 illustrates the filter openings 9 to be proximate the flexing baffle elements 12 so as to together form openings that have a varying cross-sectional area depending upon the state or positions of elements 12 that vary according to degree of heat." (page 3).

Firstly, contrary to the above allegation, the Alabaster reference does not disclose "flexing" baffle elements 12. The Alabaster reference merely discloses baffles that restrict the horizontal cross section of the bag below its top. (col. 4, lines 4-9). The Alabaster reference does not teach or suggest that these baffle elements flex at all.

Secondly, the Alabaster reference does not teach or suggest that these baffle elements 12 and the mesh material 9 "together form" filter openings between them as alleged by the Office Action. Indeed, the openings between the baffle elements 12 and the mesh material do not filter any medium at all. As explained above, the claims require filter openings for filtering a medium. The openings defined between the baffle elements 12 and the mesh material 9 do not filter the medium at all. Rather, the gaps between the baffle elements 12 and the mesh material 9 restrict the movement of foam out of the throat area 10.

Further, the Alabaster reference does not disclose the features of claim 19. Claim 19 recites flap-like elements having a first substantially covering position by a force effect of said medium flowing through said openings and can be adjusted to a second increased passage opening by an increased flow rate of said medium flowing through said openings. This feature is important because cleaning of the claimed filter requires only a change in the flow rate which is easy to do.

The Alabaster reference does not disclose anything at all about varying anything based upon a flow rate. Indeed, the Alabaster reference does not disclose anything at all that is even remotely related to a flow rate as claimed.

Rather, and in stark contrast, the Alabaster reference merely discloses varying a throat area 10 based upon a heat of a medium varying the shape of a baffle 24. The Alabaster reference does not teach or suggest varying the baffle 24 in response to a flow rate at all, let alone flap-like elements having a first substantially covering position by a force effect of said medium flowing through said openings and can be adjusted to a second increased passage opening by an increased flow rate of said medium flowing through said openings.

Indeed, the Office Action does not allege that the baffle 24 varies any state at all in response to flow rate.

Clearly, the Alabaster reference fails to disclose the features of the reference and one of ordinary skill in the art would not have been motivated to modify the teachings of the Alabaster reference to arrive at the claimed features.

Appellants respectfully submit that the rejection of claims 8, 14, and 19 under 35 U.S.C. § 103(a) is in error and should be reversed.

(8) CONCLUSION

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of Claims 8, 14, and 19 over the cited art, and hold that the Appellant's claim be allowable over such art.

Respectfully submitted,



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CLAIMS APPENDIX

1 – 7 (Canceled).

8. (Rejected) A filter, comprising:

a filter body having a plurality of filter openings for filtering a medium flowing through said openings; and

each of said openings being screened or covered by elements whose state relative to said filter openings vary under the influence of the heat of said medium flowing through said openings.

9. (Canceled).

10. (Rejected) The filter according to claim 8, including said elements are punched out of said filter body in the shape of tongues positioned in said filter openings.

11. (Rejected) The filter according to claim 10, including said tongue shaped elements are formed from a shape memory alloy material.

12. (Rejected) The filter according to claim 10, including said tongue shaped elements are formed from a bimetal material.

13. (Canceled)

14. (Rejected) A dishwashing machine, the machine including a water medium utilized in the machine, comprising:

a filter for filtering the water medium in said machine; said filter including a filter body having a plurality of filter openings for filtering the medium flowing through said openings; and each of said openings having a passage cross-section which varies automatically in response to a characteristic inherent to said medium flowing through said openings, including said filter openings being screened or covered by elements whose state relative to said filter openings vary under the influence of the heat of said medium flowing through said openings.

15. (Canceled)

16. (Rejected) The dishwashing machine according to claim 14, including said elements are punched out of said filter body in the shape of tongues positioned in said filter openings.

17. (Rejected) The dishwashing machine according to claim 16, including said tongue shaped elements are formed from a shape memory alloy material.

18. (Rejected) The dishwashing machine according to claim 16, including said tongue shaped elements are formed from a bimetal material.

19. (Rejected) The dishwashing machine according to claim 14, including said filter openings being screened or covered by flap-like elements, said flap-like elements having a first substantially covering position by a force effect of said medium flowing through said openings and can be adjusted to a second increased passage opening by an increased flow rate of said medium flowing through said openings.

20. (Rejected) The filter according to claim 8, including said elements configured as clips, with said clips, in one state thereof, being positioned in said

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filter openings and lying in a plane of said filter body, whereupon said filter openings are screened by said clips, and, in another state thereof wherein said clips have been subjected the influence of the heat of said medium flowing through said openings, said clips have been moved by a selected one of bending and pivoting out of said plane of said filter body, whereupon said filter openings are no longer completely screened by said clips.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None